

# The Need for Legal Framework to Regulate Franchising in Palestine

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## Abstract

Franchising has become one of the premier vehicles for international business expansion and the fastest growing way of playing a crucial role in international commercial transactions. Franchising is already practiced in Palestine; however, there is an ambiguity as to the legal nature of franchising work in Palestine and it is not directly regulated by the Palestinian legislature. This article examines the need for a coherent legal regulation of franchising work in Palestine.

## Keywords

Palestine – franchising – franchisor – franchisee – commercial agency law – intellectual property rights law

## I Introduction

In the last 50 years, franchising as a system of business has grown progressively, and it is estimated to account for more than one-third of the world's retail sales.<sup>1</sup> The sphere of franchising has extended from restaurant chains to the medical and dental services, real estate agents, jewellery, textiles, cosmetics

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1 Thomas Brewer and Stephen Young, *The Multilateral Investment System and Multinational Enterprises*, (Oxford University Press, 1998) 46; Donald Kuratko, *Entrepreneurship: Theory, Process and Practice*, (South-Western Cengage Learning, 8<sup>th</sup> edn. 2008) 163.

and airline industry<sup>2</sup> etc...<sup>3</sup> Franchising has been growing as a vital legal tool in business in both domestic and international markets.<sup>4</sup> The term franchising has been adopted to indicate a business system where the franchisee is granted the right to operate a service or sell a product under a marketing system that uses the trademark, name or logo owned by the franchisor.

Chiefly, the franchising has become one of the premier vehicles for international business expansion<sup>5</sup> and the fastest growing way of playing a crucial role in international commercial transactions. Therefore, franchise businesses can now be found throughout the world, across the United States, Europe and Asia and in Middle Eastern countries.

Franchising is a relatively new type of commercial activity in Palestine, having first appeared in the late 1990s with the entry of leading foreign brands in many sectors such soft drinks, fast-food restaurants and hotel chains.<sup>6</sup> Recently, franchising has grown rapidly in the Palestinian market, and number of companies that are operating in the market using foreign brands have been registered as a commercial agency agreement not as a franchise agreement and therefore, they are subject to commercial agency law. Hence, the franchise business is an uncommon form of enterprise in Palestine, the term 'franchising' appears neither in legislation nor in Court judgments, moreover, the Palestinian Civil Law (*Al-Majalla*)<sup>7</sup> and the Jordanian Commerce Law No. (12) of

2 Ruwantissa Abeyratne, 'Trade in Air Transport Services: Emerging Trends', *Journal of World Trade*, 35(6) (2001) 139. See also; Bernd Hempelmann, 'Optimal Franchise Contracts with Private Cost Information', *International Journal of Industrial Organization*, 26(2) (2006) 449.

3 Franchise business could be operated in non-traditional venues. The term non-traditional venue refers to a wide variety of captive audience facilities, such as airports, train stations, casinos; theme parks; stadiums; government property, such as a military bases; and mobile locations, such as food trucks. See; Joyce Mazero and Suzanne Trigg, 'Non-Traditional Generation: Franchise Systems Coming of Age with new Franchisees in New Venues', *Franchise Law Journal*, 30(4) (2011) 227, 236.

4 Alex Konigsberg, *International Franchising*, (Juris Publishing, 3<sup>rd</sup> edn. 2008) 1.

5 *Ibid*, at 3.

6 The National Beverage Company (NBC) has been established in 1998 and the Kentucky Fried Chicken (KFC) and Pizza Hut became the first major fast food franchise to open in Palestine in 2012.

7 *Al-Majalla* (*Majallah al-Ahkām al-Adaliyyah*) was promulgated in 1877 which was the codification of *Shrī'a* Law according to *Hanafi* School of Muslim Jurisprudence. *Al-Majalla* is the civil law which was applicable in the Ottoman Empire and it is still applicable up today in Palestine it served as the rule of law and dealt with the nature, formulation and classification of contracts and all other related matters to contracts such as consent and capacity of the contracting parties. See; *Al-Majallah al-Ahkām al-Adaliyyah* (Aref Ramadan's Collection, the Ottoman Empire), No. (o) of 1876.

1966,<sup>8</sup> which is applied in the West Bank, and the Commerce Law which is applied in the Gaza Strip,<sup>9</sup> do not regulate franchising work and the Palestinian courts have limited experience with disputes that could be called franchising disputes.

## II The Legal Environment of Franchising Work in Palestine: Franchising under the Current Palestinian Relevant Laws

There are several laws that are applied in Palestine related to business and commerce issues which are linked to franchising legal aspects by the virtue of the fact that, the franchising agreements combine a number of commercial and legal aspects that pertain to the intellectual property rights such as, trademark, patent and design, know-how and copyrights licenses as well as the commercial agency, however, the legal environment of franchising in Palestine has shortcomings that affect the development of the franchise work. The laws most closely related to commercial activities in Palestine are the Commercial Agents Law No. (2) of 2000<sup>10</sup> which constitutes the legal framework that regulates issues concerning agencies in Palestine, and the Intellectual Property Rights laws including, trademarks, trade-names, patents and designs, copyrights and know-how 'trade secrets'.

### 1 *The Franchising Agreement under the Commercial Agency Law*

The current legal framework of the franchising agreements in Palestine is subject to commercial agency law, the Commercial Agents Law No. (2) of 2000. The Palestinian National Authority issued the Commercial Agency Law in order to improve the economic and investment environment in Palestine and to regulate commercial exchanges with the international community, as well as to protect the rights of the participating parties in any commercial activities in

8 The Jordanian Official Gazette, Jordanian Commerce Law No. (12), published on March 30, 1966, Issue No. 1910, 469.

9 In Gaza Strip, the laws applied are the *Al-Majalla*, in addition to Commerce Law, the Brokers Law no (5) of 1919, amended in law no (30) of 1930, the Bankruptcy Law no (3) of 1936, the Policies Law Chapter 10 of 1929 and its amendments, the Ottoman Temporary Check Law of 1332 *Hijri*, the Public Debt Transfer Law of 1928, the Debt Law of 1931, the Custom Borders Law of 1924.

10 Palestine Official Gazette (Palestinian National Authority), Law No. 2 of 2000 on Regulating the Work of Agencies, published in Issue No. 32, 92.

Palestine.<sup>11</sup> The original Commercial Agency Law No. (19) of 1967<sup>12</sup> was amended by the Law for regulating the work of Commercial Agents No. (2) which was passed in January 2000. The Commercial Agents Law has an administrative nature which focuses on procedures of prior registration and on the work of commercial agencies. Moreover, the law provides provisions that relate to the obligations of the agent on issues pertaining to the consumer. The law outlines provisions on the general terms for practicing commercial agencies,<sup>13</sup> the commercial agencies terms,<sup>14</sup> the duties of commercial agents,<sup>15</sup> the annulment of the commercial agencies<sup>16</sup> and general and transitory provisions.<sup>17</sup>

- 11 Fayez Bikerat and others, *The Palestinian Business Law Guide*, (Institute of Law, Birzeit University 2009) 165.
- 12 The Jordanian Official Gazette, Law of Commercial Agents and Middlemen No. (19), published on March 1, 1967, Issue No. 1988, 313.
- 13 Conditions for starting Commercial Agency Work with regard to the individual agent (natural person): The agent must be a Palestinian, fully competent and residing in Palestine, and he/she must be a direct agent in the register. He/she must be registered in the commercial register. He/she should have no rulings against him/her and he/she should not be a public employee working for PNA. Conditions for starting Commercial Agency Work with regard to the legal person 'companies': The agent should be established in pursuant to the laws that applicable in Palestine. It should be registered in the company register and it's headquarter is in Palestine. 51% of its capital should be owned by Palestinians and its goals should be in practicing the work of imports and commercial agencies. See; Law No. (2) of 2000 on Regulating the Work of Agencies, Chapters 1 and 2, Article 2-4.
- 14 The commercial agency agreement must be in writing and it should contain these information and terms, such as, the agent's personal information, the address of the headquarter, the agreement date and duration, the products that covered by the agreement, the parties rights and obligations and the commercial trademark and patent. See; Law No. (2) of 2000 on Regulating the Work of Agencies, Chapter 3, Article 5,6.
- 15 The commercial agent is obliged to provide all guarantees for the commercial agency. He/she must provide maintenance for services and goods that are the subject matter of the commercial agency. See; Law No. (2) of 2000 on Regulating the Work of Agencies, Chapter 4, Article 7-12.
- 16 The law provides provisions that related to the supplier's and the agent's obligations in case of revoking the commercial agency agreement. Regarding to the agent's obligation, he/she is obliged to continue the agency agreement for at least one year after the revocation of the commercial agency agreement. Regarding to the supplier's obligation, he/she is obliged to purchase all stock products for the same price that the agent has paid for these products. See; Law No. (2) of 2000 on Regulating the Work of Agencies, Chapter 5, Article 13-15.
- 17 The law provides general and transitory provisions regarding to any dispute that might arise between the principal and the commercial agent, and regarding to any violation of

In overall terms, the law contains various provisions that provide the protection for principal, the commercial agent or distributor and the consumer. The law obliges all foreign and international companies<sup>18</sup> distributing goods and products in Palestine to appoint a direct agent who is registered with the Palestinian Ministry of National Economy.<sup>19</sup> It should be point out that, the law is structured in such a way as to be efficient and necessary for operation of a free market system in Palestine.<sup>20</sup> Accordingly, the law intends to unify the geographical areas of the West Bank and the Gaza Strip by allowing the direct agents to authorise primary, sole or more distributor(s) to assist in the delivery of goods between the West Bank and the Gaza Strip.

a           The Coherence of the Franchising Agreement with the  
              Commercial Agency Agreement

The franchising agreement is seen as a more simple way to pass from working for an employer to being self-employed.<sup>21</sup> In essence, the franchising agreement entails one party (the franchisor) grants to the other party (the franchisee) the right to conduct business within the franchisor's network for the purpose of selling certain products on behalf of the franchisor and in the franchisee's name, in exchange for remuneration, whereby both the franchising parties have rights and obligations.<sup>22</sup> A franchise opportunity is a formal business where the franchisor and the franchisee engage in a relationship. The franchise itself is an established business that follows established methods and structures of doing business. This business has a name, products or services

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the agreement. See; Law No. (2) of 2000 on Regulating the Work of Agencies, Chapter 6, Article 16–25.

- 18 In 1996, the first agency was registered for a Palestinian agent in Automobiles sector. After that, different agencies were registered in various areas and sectors, such as, food and drink products which had the largest share of agencies (20.7%), agencies in cars (14.7%). Moreover, after passing the Commercial Agency Law in 2000, 68 agencies were registered in food products, cosmetics and perfumes. See; Fayez Bikerat and others, *The Palestinian Business Law Guide*, *op. cit.*, 165.
- 19 Article 2(1) of Law No. (2) of 2000 on Regulating the Work of Agencies.
- 20 The Amended Basic Law of the Palestinian Authority in Article 21(1) states that: “*The economic system in Palestine shall be based on the principles of a free market economy*”. See; The Palestinian Official Gazette (*Al-Waqa'a al-Felasteeniyya*), Amended Basic Law, published on March 19, 2003, 5.
- 21 Peter J. Klarfeld, *Covenants Against Competition in Franchise Agreements*, (American Bar Association (ABA), 2003) 124.
- 22 Martijn Hesselink and others, *Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)* (Oxford University Press, 2006) 210. See also; Francine Lafontaine and Kathryn Shaw, ‘The Dynamics of Franchise Contracting: Evidence from Panel Data’, *Journal of Political Economy*, 107(5) (1999) 1042.

that are sold by using a proven business model, tools, practices and trademarks in order to achieve the consumer satisfaction.<sup>23</sup> The key feature of the franchise system is that, the franchisor retains the ownership of the brand and the *modus operandi* for delivery of the product, and the franchisee is responsible for the execution.<sup>24</sup>

Where as the commercial agency agreement is an agreement whereby one party (the principal) authorises another party which is either natural or a legal person (the commercial agent) to act independently on a continuing basis as a self-employed intermediary<sup>25</sup> to negotiate or to conclude business transactions and contracts in the name and on behalf of the principal.<sup>26</sup> In exchange, the principal agrees to remunerate the agent for the commercial agent's activities.<sup>27</sup>

Essentially, the purpose of the agency agreement is that, the agent who is acting independently and for payments has to promote the sale or purchase of products by attracting customers in the market and negotiating contracts on behalf of the principal, which enables the principal to conclude contracts with customers more easily.<sup>28</sup> Therefore, the contractual relationship will legally exist between the principal and the purchaser when customers purchase from the agent. It is noteworthy to mention that, the agent has no obligations towards the customers<sup>29</sup> by the virtue of the fact that, where the principal empowers the agent with the conclusion of contracts on its behalf, the agent is acting in the name and on behalf of the principal, not in its own name. Then, the transactions entered into by the agent create legal consequences for the principal.<sup>30</sup>

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- 23 Jason R. Rich, *The Unofficial Guide to Opening a Franchise*, (Wiley Publishing, 2007) 5.
- 24 Stephen Spinelli, JR, Robert M. Rosenberg and Sue Birley, *Franchising: Pathway to Wealth Creation*, (FT Prentice Hall, 2004) 2.
- 25 Martijn Hesselink and others, *Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)*, *op. cit.*, 157.
- 26 Susanne Robinson, 'Drafting High-Performance Agency and Distribution Agreements', *Journal of European Business*, 4(2) (1992) 36.; Mark Henderson and others (eds), *International Agency and Distribution Law: Volume II* (Yorkhill Law Publishing, 2007) 45. See also; Sahar Al-Naemi, *Different Trends in Regulating the Commercial Agency*, (Dar Al-Thakafa for publishing and distribution, 1<sup>st</sup> edn., 2004) 17.
- 27 Richard Price, 'United Arab Emirates (UAE)' in: Eugene Cotran and Chibli Mallat (eds), *Yearbook of Islamic Middle Eastern Law :Volume 1* (Kluwer Law International, 1996) 318.
- 28 Martijn Hesselink and others, *Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)*, *op. cit.*, 157.
- 29 *Ibid*, at 161.
- 30 *Ibid*, at 161. See also; Mark Henderson and others (eds), *International Agency and Distribution Law: Volume II op. cit.*, 59.

In fact, the commercial agency agreement is overlapping with the franchising agreement concerning to the distribution nature of the products in the markets, in addition to some identical characteristics and obligations upon the parties. Both agreements are concluded for common interests of the parties,<sup>31</sup> and both are based upon objective criteria (*intuitu personae*), to that extend; the agreement will be terminated in case of the death or insolvency of one of the contractors. In addition, the principal is required to inform and disclose all the necessary information to the agent in order to conclude the contracts. This information concerning the relevant characteristics of the products, prices and the terms of payments. In addition, the principal must inform the agent of his/her acceptance or rejection of any contracts.<sup>32</sup> Likewise, the franchisor is obliged to provide general information to the franchisee regarding to the market and the business methods. Moreover, there are legal independency for both the franchisee and the agent from both the franchisor and the principal. To that degree, the agent and the franchisee are not employees for the principal and the franchisor.<sup>33</sup> The agent must follow the reasonable instructions that are provided by the principal.<sup>34</sup> These instructions are only to protect the principal's interests and in the meanwhile to not affect the agent's independency.<sup>35</sup> Likewise, the franchisee has to conduct his/her business according to the franchisor's methods and instructions. Also, the agent and the franchisee must take the preventative measures to safeguard the principal and the franchisor interests,<sup>36</sup> and they obliged to inform the principal and the franchisor of any infringements occur during the performace of the contract.<sup>37</sup> Despite these identical characteristics, there are some differentiations in the nature and the obligations of both agreements, the commercial agency is an

31 Yaser Al-Hadedi, *The Legal System for the Franchising in the Economic and Legal Thought*, (Manshaet Al-Maaref, 2007) 44. See also; Sahar Al-Naemi, *Different Trends in Regulating the Commercial Agency*, *op. cit.* 28.

32 Richard Price, 'United Arab Emirates (UAE)' in: Eugene Cotran and Chibli Mallat (eds), *Yearbook of Islamic Middle Eastern Law: Volume 1*, *op. cit.*, 318.

33 Yaser Al-Hadedi, *The Legal System for Franchising in the Economic and Legal Thought*, *op. cit.*, 45.

34 Naim Moghabghab, *Franchising: A Comparative Study*, (Al-Halabi, 1<sup>st</sup> edn., 2006) 108. See also; Mark Henderson and others (eds), *International Agency and Distribution Law: Volume 11*, *op. cit.*, 47.

35 Martijn Hesselink and others, *Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)*, *op. cit.*, 164.

36 Richard Price, 'United Arab Emirates (UAE)' in: Eugene Cotran & Chibli Mallat (eds), *Yearbook of Islamic Middle Eastern Law: Volume 1*, *op. cit.*, 318.

37 Mark Henderson and others (eds), *International Agency and Distribution Law: Volume 11*, *op. cit.*, 47-48.

agreement whereby the agent is obliged to do a legal action for the principal's interest, insofar, the agreement is based on a legal action by the agent, not on a material action. Hence, the subject matter of the agency is different from the subject matter of the franchising which is based on the usufruct or use of the intangible's movables or services not to the legal actions.<sup>38</sup> Furthermore, the obligations of the principal and the agent in the commercial agency agreement are different from the obligations of the franchisor and the franchisee in the franchising agreement, the principal has to pay a commission to the agent for contracts concluded during the agency period<sup>39</sup> whereas, the franchisor receives the fees and royalties from the franchisee in return for using the franchisor's name and intellectual property right. The franchisor is required to give the relevant know-how and the business's trade secret to the franchisee in addition to an initial and ongoing assistance and training in order to operate the franchising and he has to monitor the franchisee's business, while, the transfer of the know-how is not essential in the agency agreement and the principal does not monitor or control the agent during the performance of the agency agreement. The franchisee is obliged to protect the franchisor's know-how and this obligation remains beyond the termination of the franchising agreement. While, there are no further obligations upon the agent after the agency agreement is terminated. The franchisee's right to use the franchisor's name and intellectual property right is for the franchisee's interest and in his/her own name, which is on contrary of the agency agreement, where is the agent acts on behalf of the principal and for the principal's interest.

In view of the foregoing examination, it's obvious that the legal nature of the franchising agreement including; the subject matter of the franchising agreement and the nature of the relationship between the franchising parties and their obligations and characteristics are different from the subject matter of the Commercial Agency agreement and the parties obligations.

## 2 *The Franchising Agreement under Intellectual Property Rights Laws*

The intellectual property rights and the franchising normally are closely connected to each other. Particularly, the value and the success of most franchising is often substantially based on the intellectual property, primarily trademarks, trade-names, copyrights, trade secrets and patents.<sup>40</sup> Therefore, the importance

38 Lana Irsheed, 'The Legal Characterization of the Franchising Agreement', *Journal of Law and Justice*, the Fatwa and Legislation Bureau (4) (2001) 134.

39 Sahar Al-Naemi, *Different Trends in Regulating the Commercial Agency*, *op. cit.* 113.

40 Louis Lafili and Nocolé Van Ranst, 'Intellectual Property Rights', in: Mark Abell (ed.), *The International Franchise Option*, (Waterlow Publishers, 1<sup>st</sup> edn., 1990) 86.

of intellectual property for franchising cannot be underestimated. The exclusive rights that intellectual property laws provide in copyrights, trademarks, trade-names and patents are very important to protect the franchise.<sup>41</sup>

The Intellectual Property Rights protected under the laws that in force in Palestine. The statutory basis of intellectual property rights in Palestine has remained virtually unchanged since the Mandatory period.<sup>42</sup> Therefore, there is no modern intellectual property rights law in Palestine and all intellectual property rights laws that are applied in the West Bank and the Gaza Strip have driven from British Mandate law.<sup>43</sup> Most Palestinian intellectual property rights laws are still divided between the West Bank and the Gaza Strip.<sup>44</sup>

In the West Bank, the legal framework regulating intellectual property rights is the Jordanian statute which has replaced the British Mandate legislations. Thus, the intellectual property rights laws that are valid in the West Bank are, the Commercial Trademarks Law No. (33) of 1952,<sup>45</sup> Law on Invention and Drawing Concessions No. (22) of 1953,<sup>46</sup> Law on Registering Commercial Names No. (30) of 1953,<sup>47</sup> and the Copyrights law of 1911.<sup>48</sup>

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- 41 Theo Bodewig, 'Franchising in Europe: Recent Developments', *International Review of Industrial Property and Copyright Law*, 24(2) (1993) 161. See also; William Finkelstein, 'Protecting Trademarks and Related Intellectual Property Rights', in: Richard Asbill and Steven Goldman (eds), *Fundamentals of International Franchising*, (American Bar Association (ABA), 2001) 61.
- 42 Palestine was an occupied territory by the British at the end of the World War I from 1917 until 1924. See, Usamah Shahwan, *Public Administration in Palestine: Past and Present*, (Lanham- Maryland: University Press of America, 2003) 14; Mordechai Hallerand Daniel Kalman, *Intellectual Property Reform in the Palestinian Territories*, (Center for International Private Enterprise, IPCRI, Law & Development Program, Commercial Law Report Series, No. 4, Jerusalem, Palestine 1997) 4,5.
- 43 International Business Publications, *Arab States Investment and Business Guide: Volume 1, Arab League Countries Investment Climate and Opportunities*, (International Business Publications, 6<sup>th</sup> edn., 2008) 166.
- 44 There are two separate registers exist for registration the trademarks, patents and designs. One in the West Bank at the Ministry of National Economy and the other in the Gaza Strip at the Ministry of Justice.
- 45 The Jordanian Official Gazette, Jordanian Trademark Law No. (33), published on June 1, 1952, Issue No. 1110, 243.
- 46 The Jordanian Official Gazette, Law on Invention and Drawing Concessions No. (22), published on October 17, 1953, Issue No. 1131, 491.
- 47 The Jordanian Official Gazette, Law on Registering Commercial Names No. (30), Published on February 16, 1953, Issue No. 1134, 522.
- 48 The Laws of Palestine (Drayton's Collection – British Mandate), Copyright and Author Rights Law No. (46) of 1911, published on January 22, 1937, Issue No. 0, 3169.

In the Gaza Strip, the British Mandate on intellectual property rights laws are still valid and in force. These laws are, the Civil Claims Law of 1933, the Commercial Trademarks Law No. (35) of 1938,<sup>49</sup> Law on Invention and Drawing Concession No. (33) of 1924,<sup>50</sup> Law on Registering Commercial Names No. (23) of 1935<sup>51</sup> and Copyright and Author Rights Law No. (15) of 1924<sup>52</sup> which stipulate implementation of British Copyright and Author Rights Law No. (46) of 1911.<sup>53</sup>

#### a Franchising and Trademarks and Trade Names

In a typical franchise business, the trademarks and the trade names are often of paramount importance for the franchising and the cornerstone of the franchise system.<sup>54</sup> The trademarks and the trade names are in most franchised businesses the main elements for a successful business in a market economy.

Trademarks in Palestine are governed by the Jordanian Commercial Trademarks Law No. (33) of 1952,<sup>55</sup> the Commercial Trademark Regulation No (1) of 1952<sup>56</sup> and the Product Marks law No. (19) of 1953<sup>57</sup> which are the laws valid in the West Bank. In the Gaza Strip, the trademarks are governed by the Commercial Trademarks Law<sup>58</sup> No. (35) of 1938<sup>59</sup> and the Product Marks Law of 1938 which are still valid in the Gaza Strip. The trade-names or commercial-names are also governed by the Jordanian Commercial Names Registration Law No. (30)

49 The Palestinian Official Gazette (British Mandate), Mandate Commercial Trademarks Law No. (35), published on November 24, 1938, Issue No. 843, 156.

50 The Patent and Design Ordinance No. (33) of 1924 issued on December 15, 1924.

51 The Palestinian Official Gazette (British Mandate), Law on Registering Commercial Names No. (23), Published on May 27, 1935, Issue No. 514, 175.

52 The Laws of Palestine (Drayton's Collection – British Mandate), Copyright and Author Rights Law of 1924, published on January 22, 1937, Issue No. 25, 425.

53 The Laws of Palestine (Drayton's Collection – British Mandate), Copyright and Author Rights Law No. (46) of 1911, published on January 22, 1937, Issue No. 0, 3169.

54 Richard Caves and William Murphy, 'Franchising: Firms, Markets and Intangible Assets', *Southern Economic Journal*, 42(4) (1976) 572. See also; Yaser Al-Hadedi, *The Legal System for Franchising in the Economic and Legal Thought*, *op. cit.*, 116.

55 The Jordanian Official Gazette, Jordanian Trademark Law No. (33), published on June 1, 1952, Issue No. 110, 243.

56 The Jordanian Official Gazette, Jordanian Commercial Trademark Regulation No. (1), published on December 16, 1952, Issue No. 1129, 397.

57 The Jordanian Official Gazette, Jordanian Product Marks law No. (19), published on January 19, 1953, Issue No. 1131, 486.

58 The Commercial Trademarks Law No. (35) of 1938 enacted by the British Mandate.

59 The Palestinian Official Gazette (British Mandate), Mandate Commercial Trademarks Law No. (35), published on November 24, 1938, Issue No. 843, 156.

of 1953<sup>60</sup> which is still applicable in the West Bank, and the Law on Registering Commercial Names No. (23) of 1935<sup>61</sup> which is valid in the Gaza Strip. These laws regulating the trademarks and trade-names aspects and all procedures related to it. The commercial trademarks laws set out number of forms and images in which trademarks may appear. The trademarks which might register should consist of letters, drawings, markings, or a mixture of these with a distinctive feature.<sup>62</sup> Therefore, the trademark should be distinctive in character and capable of distinguishing the goods or services to which it will be applied in order to register it in the Ministry of National Economy in the West Bank and the Trademark Registrar in the Gaza Strip. Trademark should be new within the states and it should not have been used before for the same products of goods for which the trademark is to be registered.<sup>63</sup> Alike, the trade-names laws describing the registration procedures of trade-names for both the natural or legal person. The registration application must be submitted in the set form and the applicant has to provide the necessary documents such as, the personal identification, certificate from the Chamber of Commerce, trade license, company registration certificate and other related documents.<sup>64</sup>

Further, the commercial trademarks laws also indicate the conditions where the marks could not be registered as a trademark. These condition such as, marks that are identical to an already registered trademark, and those are leading deception of the public, or are contrary to public morality.<sup>65</sup> In addition, the commercial trademarks laws stipulate that, the period of initial protection of registered trademarks is seven years, beginning from the date or registration, and trademarks may be renewed for successive periods of 14 years.<sup>66</sup> Further, the trade-names laws providing provisions related to the duration of submitting the necessary documents of the trade-name which is 14 days, and the penalties for giving false data<sup>67</sup> and for not registering the

60 The Jordanian Official Gazette, Law on Registering Commercial Names No. (30), Published on February 16, 1953, Issue No. 1134, 522.

61 The Palestinian Official Gazette (British Mandate), Law on Registering Commercial Names No. (23), Published on May 27, 1935, Issue No. 514, 175.

62 Article 7 of the Commercial Trademarks Law No. (33) of 1952, and of the Commercial Trademarks Law No. (35) of 1938.

63 Fayeze Bikerat and others, *The Palestinian Business Law Guide*, *op. cit.*, 173.

64 Article 5 of Law on Registering Commercial Names No. (30) of 1953; and the Law on Registering Commercial Names No. (23) of 1935.

65 Article 8 of the Commercial Trademarks Law No. (33) of 1952, and of the Commercial Trademarks Law No. (35) of 1938.

66 Article 20, 21 of the Commercial Trademarks Law No. (33) of 1952, and of the Commercial Trademarks Law No. (35) of 1938.

67 Article 11 of Law on Registering Commercial Names No. (30) of 1953, and the Law on Registering Commercial Names No. (23) of 1935.

trade-name.<sup>68</sup> Moreover, the use of trademarks is not obligatory for filing applications nor for maintaining trademark registrations in force, because the trademark registration is vulnerable to cancellation at any time by any third party who either would claim that the trademark was not actually used during the last two years or there was no *bona fide* of using the trademark.<sup>69</sup> Furthermore, the commercial trademarks laws provide the registration procedures for the trademarks,<sup>70</sup> also, it provides provisions relating to the waivers of the trademarks,<sup>71</sup> the rights of commercial trademark owners<sup>72</sup> and the penalties for violating trademark laws.<sup>73</sup>

It is worth noting that, the registration of foreign commercial trademarks in Palestine occurs in the same manner in which the national commercial trademarks are registered.<sup>74</sup> Accordingly, the foreign trademarks that are registered by member states in international conventions on the protection of trademarks are recognised by the Palestinian laws. Moreover, the legal protection of the foreign trademarks is granted only to those foreign trademarks which have been registered in the Palestinian Ministry of National Economy.<sup>75</sup>

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68 Article 9 of Law on Registering Commercial Names No. (30) of 1953, and the Law on Registering Commercial Names No. (23) of 1935.

69 Article 21, 22 of the Commercial Trademarks Law No. (33) of 1952, and of the Commercial Trademarks Law No. (35) of 1938. See also; International Business Publications, *Middle East and Arabic Countries: Copyright Law Handbook- Volume 1- Copyright Law in Selected Countries*, (International Business Publications, 6<sup>th</sup> edn., 2009) 105.

70 Article 14 of the Commercial Trademark Regulation No (1) of 1952 and of the Commercial Trademarks Law No. (35) of 1938 regulate the registration of the trademarks. Therefore, when the trademark applications accepted by the Registrar it will be published in the Official Gazette, and there is a three-month period open for filing opposition by any interested party.

71 Article 12 of the Commercial Trademarks Law No. (33) of 1952; and the Commercial Trademarks Law No. (35) of 1938.

72 Article 26 of the Commercial Trademarks Law No. (33) of 1952; and the Commercial Trademarks Law No. (35) of 1938.

73 Article 38 of the Commercial Trademarks Law No. (33) of 1952; and and the Commercial Trademarks Law No. (35) of 1938. Also, The the Product Marks law No. (19) of 1953 in Article 3 refers to sanctions of the violation of the trademark. The law provides that, the sanction will be imprisonment for a maximum period of one year or a fine not exceeding a hundred Jordanian Dinars for the infringement of a registered trademark. See also; Basim Makhoul and Nasr Atyani, *Critical Review of the Industrial Property Protection Law and Copyright and Neighboring Rights Law*, (the Palestinian Economic Policies Research Institute (MAS), Palestine, 2003) 15, 16.

74 For the registration procedures, see the Commercial Trademarks Law No. (33) of 1952.

75 Fayeze Bikerat and others, *The Palestinian Business Law Guide, op. cit.*, 175.

On the basis of the aforesaid, the franchising system is substantially associated with the franchisor's trademark, trade-name and the service mark.<sup>76</sup> The trademark of the franchise system with its goodwill and its high reputation is considered as a basic subject matter of the franchisor's license to the franchisee<sup>77</sup> which enables the consumer to recognise the franchise chains,<sup>78</sup> and enables the franchisor to transfer the franchise's experience to new franchisees. Also, the importance of the trade-name appears in the product distribution franchising system, which is called also a product or trade-name franchising. Where the product itself defines the franchise business,<sup>79</sup> such as, automobiles dealer or soft drinks dealer where the product or trade-name franchise itself defines the franchising and it is all what the franchisor is selling without giving the franchisee the entire business package. Moreover, the use of common marks and names allow the franchisee to enjoy the franchisor's reputation.<sup>80</sup> Therefore, despite the fact that, the trademarks and service marks are important for the success of the franchising business and they are considered as a cornerstone of franchising, the commercial trademarks laws in Palestine do not regulate the service marks.<sup>81</sup>

#### b Franchising and Copyrights

Copyright is the right to copy; particularly, a property right in an original work of authorship that can be tangibly expressed, as opposite to a mere idea or concept. The holder of the copyright has the exclusive right to reproduce the work, adapt and distribute copies to the public.<sup>82</sup>

76 "The service mark is used in the sale and advertising of services and generally appears in advertising and promotional materials". See; Andrew Sherman, *Franchising and Licensing: Two Powerful Ways to Grow your Business in any Economy* (Amacom, 4<sup>th</sup> edn., 2011) 135.

77 Leslie Williams, 'Trademark and Related Rights in Franchise Agreements in Germany: A Comparison with US Law', *International Review of Industrial Property and Copyright Law*, 14(5) (1983) 632.

78 Guy Tritton, *Intellectual Property in Europe*, (Sweet & Maxwell, 3<sup>rd</sup> edn., 2008) 225.

79 Roger Betancourt, *The Economics of Retailing and Distribution*, (Edward Elgar Publishing, 2004) 191.

80 Theo Bodewig, 'Franchising in Europe: Recent Developments', *op. cit.*, 161.

81 Salah Al-Deen, *Trademarks: Nationally and Internationally*, (Dar Al-Thakafa for publishing and distribution, 1<sup>st</sup> edn., 2009) 72–73. See also, Bashar Malkawi, 'The Jordanian Intellectual Property Regime: Triangle of Copyright, Trademark, and Patent', *Macquarie Journal of Business Law*, 7 (2010) 246.

82 William A. Finkelstein, 'Protecting Trademarks and Related Intellectual Property Rights', in: Richard M. Asbill and Steven M. Goldman (eds), *Fundamentals of International Franchising*, *op. cit.*, 95.

Copyright law in Palestine consists entirely of the British mandatory legislation and this law has remained unchanged by the Jordanians, Egyptians and Israelis. Copyright in both the West Bank and the Gaza Strip is governed particularly by the Copyrights laws of 1911<sup>83</sup> and 1924.<sup>84</sup>

The Copyright law sets out the general structure of copyright aspects, the law defines the subject matter of copyright, such as, original literary, dramatic, musical and artistic work.<sup>85</sup> Moreover, the law illustrates the scope of the legal protection and provides protection for all kinds of works whether literary, artistic and musical. The protection of copyright lasts for a period of 50 years after the death of the author of the work.<sup>86</sup> In addition, the law identifies the rules of ownership,<sup>87</sup> the civil remedies including injunction<sup>88</sup> and importation of copies and some other special provisions for certain works such as, joint works,<sup>89</sup> posthumous works, government publications,<sup>90</sup> mechanical instruments,<sup>91</sup> political speeches,<sup>92</sup> photographs,<sup>93</sup> and foreign works.<sup>94</sup> Moreover, the law also deals with the copyright infringement, the sanctions,<sup>95</sup> compulsory licenses<sup>96</sup> as well as many other procedural issues.

Copyright does have significant relevance in franchise systems. In particular, the main elements of the franchising such as brochures, handbooks, posters, design, architectural plans, and computer programs may be protected by copyright laws.<sup>97</sup> Therefore, copyright could form a basis of prohibiting the copying

83 The Laws of Palestine (Drayton's Collection – British Mandate), Copyright and Author Rights Law No. (46) of 1911, published on January 22, 1937, Issue No. 0, 3169.

84 The Laws of Palestine (Drayton's Collection – British Mandate), Copyright and Author Rights Law of 1924, published on January 22, 1937, Issue No. 25, 425.

85 Article 1 of the Copyright and Author Rights Law No. (46) of 1911.

86 Article 3 of the Copyright and Author Rights Law No. (46) of 1911.

87 Article 5 of the Copyright and Author Rights Law No. (46) of 1911.

88 Article 6 of the Copyright and Author Rights Law No. (46) of 1911.

89 Article 17 of the Copyright and Author Rights Law No. (46) of 1911.

90 Article 18 of the Copyright and Author Rights Law No. (46) of 1911.

91 Article 19 of the Copyright and Author Rights Law No. (46) of 1911.

92 Article 20 of the Copyright and Author Rights Law No. (46) of 1911.

93 Article 21 of the Copyright and Author Rights Law No. (46) of 1911.

94 Article 23 of the Copyright and Author Rights Law No. (46) of 1911.

95 Article 4 of the Copyright and Author Rights Law of 1924.

96 Article 4 of the Copyright and Author Rights Law No. (46) of 1911.

97 Andreas Geiger, 'Patents, Trade Marks, Copyrights: A Mission for Article 82 EC?' *European Competition Law Review*, 25(5) (2004) 311. See also; Nick Rose, 'Resolving International Franchise Disputes', in: Mark Abell (ed.), *The International Franchise Option*, (Waterlow Publishers, 1<sup>st</sup> edn., 1990) 172.

of those elements.<sup>98</sup> However, copyright laws in Palestine do not regulate the copyright aspects that related to the technology and computer programs.

### c Franchising and Patents

Patents are exclusive and limited rights that are granted by a government to an inventor to use and profit from his/her invention. More precisely, a patent is a document that defines the scope of patent rights and gives the owner an exclusive right to exclude others from using and selling the patented invention.<sup>99</sup>

The primary patent statute currently in force in the West Bank is the Jordanian Patents and Design Law<sup>100</sup> No. (22) of 1953,<sup>101</sup> and the primary patent statute currently in force in the Gaza Strip is the Patents Design Ordinance No. (33) of 1924.<sup>102</sup> These laws govern the rights of inventors to exclusively use, make, manufacture, supply, produce and sell their inventions, and to grant relevant licenses, as well these laws regulate the granting of concessions for new inventions<sup>103</sup> and address the way concessions are registered,<sup>104</sup> protected and examined in terms of specifications.<sup>105</sup> Explanation of the law articles, the

98 Theo Bodewig, 'Franchising in Europe: Recent Developments', *op. cit.*, 163.

99 William Finkelstein, 'Protecting Trademarks and Related Intellectual Property Rights', in: Richard M. Asbill and Steven M. Goldman (eds), *Fundamentals of International Franchising*, *op. cit.*, 94.

100 Certain administrative provisions of the Jordanian law were amended by two Israeli Military orders. One of these orders related to administrative fees, and the other order related to Patents and designs (re-registration) (Judea and Samaria) No. (555) of 1974. The aim of this order was to establish a new independent patent and design register in the West Bank. See; Order No. (555) Concerning Patents and Designs (New Registration) in 1974.

101 The Jordanian Official Gazette, Law on Invention and Drawing Concessions No. (22), published on October 17, 1953, Issue No. 1131, 491.

102 Patents Design Ordinance No. (33) of 1924 is originally British.

103 Article 2 of Patents and Design Law No. (22) of 1953 defines Invention as: "A new product or commercial commodity or the application in some new manner for any purpose of industry or manufacture of any means already discovered, known or used". And the same article defines Design as: "The features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appear to and are judged solely by the eye, but does not include any mode or principle of construction which is in substance a mere mechanical device".

104 Article 5 and 6 of Patents and Design Law No. (22) of 1953 clarifies that, the inventor submits the application to register patents according to the set form in order to obtain concessions for his/her invention. The patent should contain the description of the type of the invention and its method of use.

105 Basim Makhoul and Nasr Atyani, *Critical Review of the Industrial Property Protection Law and Copyright and Neighboring Rights Law*, *op. cit.*, 15.

registration of any patents should be at the Ministry of National Economy in the West Bank and the Patent registrar in the Gaza Strip at the Ministry of Justice.<sup>106</sup> Patents are protected for a period of sixteen years from the date of filling the patent application.<sup>107</sup> In case of infringement of patents, the Court of First Instance (West Bank) and the District Court or Registrar (Gaza Strip) have jurisdiction to hear all infringement cases.<sup>108</sup>

Generally, patents are not essential for the franchise system success and may play only a minor role in the franchising. However, patents might be vital for some franchise systems that are based either on the distribution of patented products or on using the methods of production.<sup>109</sup> In other words, the patents are important in the franchise system in a case where the patents are material to the franchising products or services.<sup>110</sup>

#### d Franchising and Know-How ‘Trade Secrets’

There is no law regulates the know-how or the trade secrets in Palestine, however, the proposed Palestinian Commercial Law<sup>111</sup> regulates the commercial obligations and contracts that contain the issue of technology transfer.<sup>112</sup> Although the transfer of technology is broader than franchising, where in the technology transfer one country or firm transfers the technology; including new products, processes and working methods to other country or firm,<sup>113</sup> franchising is one of the methods of transferring technology from one country or firm to another.<sup>114</sup>

106 Article 3 of of the Commercial Trademarks Law No. (33) of 1952.

107 Article 15 of of the Commercial Trademarks Law No. (33) of 1952.

108 Article 49 of of the Commercial Trademarks Law No. (33) of 1952.

109 Theo Bodewig, ‘Franchising in Europe: Recent Developments’, *op. cit.*, 162. See also; Nick Rose, ‘Resolving International Franchise Disputes’, in: Mark Abell (ed.), *The International Franchise Option*, *op. cit.*, 171–172.

110 Madson, ‘Patent Misuse in Franchise Agreements: A Ripple on the Waters of Franchise Law’, *Franchise Law Journal*, 20(3) (2001) 107.

111 The Palestinian National Authority, The Fatwa and Legislation Bureau ‘Diwan Al-Fatwa Wa Al-Tashri’: Explanatory Memorandum- Proposed Palestinian Commercial Law, 2003.

112 The proposed Palestinian Commercial Law regulates transfer of technology in Articles 72 to 88.

113 Clare Narrod, Carl Pray and Marites Tiongco, ‘Technology Transfer, Policies, and the Role of the Private Sector in the Global Poultry Revolution’, International Food Policy Research Institute (IFPRI), (2008) Discussion Paper No. 00841, 9.

114 United Nations Conference on Trade and Development, ‘Transfer of Technology’, UNCTAD Series on issues in International Investment Agreements, United Nations, (2001) 13. See also; Ilan Alon, *Service Franchising: A Global Perspective*, (Springer Science and Business Media, 2006) 31.

The technology transfer as it relates to franchising refers to the transfer of the franchisor's know-how to the franchisee and the transfer of the learning organisation, and labor skills as well as the hardware and machinery by the franchisor to the franchisee in order to operate the franchising work.<sup>115</sup> Thus, the franchising agreements which contain the technology transfer or know-how as a subject matter of the franchising work might be governed by the proposed Palestinian Commercial Law. However, one can notice that Article 79<sup>116</sup> of the proposed Palestinian Commercial Law is ambiguous concerning to the product distribution franchise, which is one of the main franchising types, and it might exclude and not cover the product distribution franchise, where the franchisor grants his/her trademark and trade-name to the franchisee without providing the franchisee with the entire franchise business, such as, soft drinks, automobiles and gasoline.<sup>117</sup> Moreover, the legal nature of the franchising agreements is different from the legal nature of the technology transfer contract, where the subject matter of franchising is a usufruct of the intangible's movables or services that based on the trademark and tradename. Also, the franchisor and the franchisee's relationship is based upon personal or objective criteria. Therefore, the coordination between the franchisor and the franchisee is much more than the coordination between the supplier and the importer in the technology transfer.

Furthermore, while the franchisor's obligations in the franchising agreement are similar, to some extent, the supplier's obligations in the technology transfer agreement according to the proposed Commercial Law, the franchisee's obligations are different from the importer's obligations. The franchisee must pay the fees and royalties to the franchisor in exchange of using the franchisor's trademark and trade-name, whereas in the technology transfer agreement the importer could pay the supplier in a form of certain quantity of the commodity in which the technology is used for its production or a primary material the importer produces and undertakes to export to the supplier.<sup>118</sup>

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<sup>115</sup> *Ibid*, at 38, 39.

<sup>116</sup> Article 79 defines the transfer of technology contract as "*an agreement in which the (supplier of technology) undertakes to transfer, against payment, technical know – how to the (importer of technology) to use it in a special technical way, for the production or development of a specific commodity, the installation or operation of machines or equipment, or for the provision of services. The mere sale, purchase, lease, or rental of commodities or trademarks shall not be considered a transfer of technology, unless this is set forth as part of, or is connected with the transfer- of – technology contract*".

<sup>117</sup> William Finkelstein and James R. Sims, *The Intellectual Property Handbook, A Practical Guide For Franchise, Business and IP Counsel*, (American Bar Association (ABA), 2005) 37.

<sup>118</sup> Article 84(3) of the Proposed Palestinian Commercial Law.

Moreover, the franchisee has to protect the franchisor's know-how even after the termination of the franchising agreement, where the proposed Commercial Law does not stipulate the same condition upon the importer. Furthermore, the proposed Commercial Law considers using specific trademarks to distinguish the commodities for which the technology was used in their production<sup>119</sup> as a condition that might restrict the freedom of the importer, where as the franchisee, in the product distribution franchise, has to use the franchisor's trademark and trade-name.

In view of the above mentioned examination, there is a need to regulate the know how or trade secret in Palestine due to the fact that, the franchise business is based upon confidential and proprietary information including the know-how or trade secret. A franchise business derives competitive and economic value in the market due to the fact that it is not known by the public.<sup>120</sup> Therefore, the franchisor's technical, organisational and business know-how are considered as the main elements for the success of the franchise in the market.<sup>121</sup> The franchisor in order to develop and run the franchise system, he/she has to accumulate the technical know-how that relates to the production of the franchise's outlet, and the franchisor has to obtain the information about the way and the method of organising and marketing the franchised outlets effectively. Therefore, the franchisor's know-how involves a body of substantial technical knowledge which relates to the composition, preparation, and processing of the franchised products that are not known or easily accessible to the public and which are maintained in secrecy.<sup>122</sup> Additionally, the know-how gives the franchisor the opportunity to obtain an advantage over competitors who do not know or do not use this trade secret.<sup>123</sup> Moreover, the know-how is considered as a treasure of knowledge that the franchisor gives to the franchisee. The franchisee through the franchisor's know-how, even if the franchisee is inexperienced, can immediately participate fully in the franchising and compete successfully in the market.<sup>124</sup>

119 Article 81 of the Proposed Palestinian Commercial Law.

120 Mark Vanderbroek and Christian Turner, 'Protecting and Enforcing Franchise Trade Secrets', *Franchise Law Journal*, 25(4) (2006) 191.

121 Yaser Al-Hadedi, *The Legal System for Franchising in the Economic and Legal Thought*, *op. cit.*, 75.

122 Mark Vanderbroek and Christian Turner, 'Protecting and Enforcing Franchise Trade Secrets', *op. cit.*, 192.

123 *Ibid*, at 192.

124 Theo Bodewig, 'Franchising in Europe: Recent Developments', *op. cit.*, 162. See also; Mark Vanderbroek and Christian Turner, 'Protecting and Enforcing Franchise Trade Secrets', *op. cit.*, 192.

### III The Importance of Regulating Franchising Work in Palestine

Franchising is an elaborate method of licensing and distributing, it has become one of the most widely used methods for international expansion. Franchising is described as the main dominant force in the distribution of goods and services,<sup>125</sup> and it is a form of business organisation, which by its nature provides business units for new entrepreneurs, new jobs and services. Therefore, enacting franchising law in Palestine will develop the commercial infrastructure and the domestic oriented business in an efficient manner. Also, the franchising law affords the Palestinian market an opportunity to maintain and encourage the foreign businesses to remind in Palestine and avoiding the legal uncertainty for such commercial activity. This leads as well to understand the economic and legal aspects of the franchising concept and it will have an impact on the Palestinian economy by permitting businesses to grow rapidly in the Palestine market. Franchising can provide investment opportunities that will introduce new and improved goods and services into the market, as well as the Palestinian consumers will benefit from more efficient delivery of quality goods and services. Moreover, the Palestinian economy will more easily be integrated into the growing global market by the fact that the franchising provides advantages for the franchisor and the franchisee. Franchising is a rapid method for achieving expansion of a product market,<sup>126</sup> a franchisor can expand a business nationally and internationally by selling the franchise system in selected locations by using little capital comparable with other entrepreneurs, who normally face many problems and issues during managing and growing a new venture.<sup>127</sup> Also, the franchisor benefits from the fact that, the franchisee as a sole proprietor will normally be more motivated<sup>128</sup> and enthused to maximise growth and profitability and to ensure the success of the franchised business.<sup>129</sup> Also, there are advantages for the franchisee, the

125 US House of Representatives Committee on Small Business, *Franchising in the US Economy: Prospects and Problems*, US Government printing office, (1990) 1.

126 Robert Emerson, 'Franchise Encroachment', *American Business Law Journal*, 47(2) (2010) 195.

127 Robert Hisrich and Michael Peters, *Entrepreneurship* (McGraw- Hill College, 5<sup>th</sup> edn., 2001) 487.

128 Richard Hoffiman and John Preble, 'Franchising: Selecting a Strategy for Rapid Growth', *Long Range Planning Journal*, 24(4) (1991) 76.

129 William Pride, Robert Hughes and Jack R. Kapoor, *Business* (South-Western Cengage Learning, 10<sup>th</sup> edn., 2008) 156. See also; Sara Carter and Dylan Jones-Evans, *Enterprise and Small Business: Principles, Practice and Policy*, (FT Press – Pearson Education Limited, 2<sup>nd</sup> edn., 2006) 444.

franchisee gets the chance to start a new business with limited capital and to use others business experience. Moreover, the opportunity of success is significantly greater than starting up an independent business.<sup>130</sup> The franchisee benefits from a national or international reputation of the franchisor business, as well as the franchisee benefits from the franchisor's activities such as, advertising, marketing and research development. In addition, the franchisee also receives comprehensive information on the business concept, including the necessary assistance, training and ongoing supports.<sup>131</sup> From the consumer's point of view, the general public could hardly care less about the differences between the franchises, co-ops and voluntary groups. Instead, for the consumer, the franchise's selling point satisfies the consumer's desire to do their shopping quickly and efficiently.<sup>132</sup> Furthermore, the consumer belief in that franchise system inspires confidence and assurance in the quality of the franchise products and services.<sup>133</sup>

#### IV Conclusion

Reviewing the legal environment of franchising work in Palestine under the current Palestinian relevant laws that regulate commercial activity has shown that the franchise environment has shortcomings that affect the development of the franchise work in the Palestinian market. The study perceives that there is an ambiguity of the legal nature of franchising work in Palestine and the Palestinian law lacks clarity on franchising and the Palestinian legislature has not taken the initiative to regulate this important segment of commercial activity in Palestine. It is therefore recommended that the establishment of some numbers of such businesses in Palestine shall result in the creation of better legal tools that regulate franchising and that the Palestinian legislature should regulate and provide a specific law with respect to the franchising business.

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130 Richard Hoffman and John Preble, 'Franchising: Selecting a Strategy for Rapid Growth', *op. cit.*, 76.

131 Anna Watson and John Stanworth, 'Franchising and Intellectual Capital: A Franchisee's Perspective', *International Entrepreneurship and Management Journal*, 2(3) 338, 340. See also; Lorelle Frazer, 'Causes of Disruption to Franchise Operations', in the *Journal of Business Research International Entrepreneurship and Management Journal*, 54(3) (2001) 228.

132 *Ibid*, at 13.

133 Warren Pengilly, 'International Franchising Agreement and Problem in their Negotiations', *North-Western Journal of International Law and Business Chicago*, 7(2) (1985) 189.